

Ipswich, Massachusetts

ZONING BOARD OF APPEALS

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Meeting Minutes

August 18, 2011

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members, the Ipswich Zoning Board of Appeals held a meeting on Thursday August 18, 2011 at 7:30 p.m. in Room A at the Town Hall. Members attending were Chairman Robert Gambale, Benjamin Fierro, Roger LeBlanc, William Page, Lewis Vlahos and Alternate member Keri Mac Rae. Also, Building Inspector Jim Sperber and Administrative Assistant to the Board Marie Rodgers.

Citizen Queries: There were none.

Public Hearings:

Chairman announced that there will be four voting members only; normally with a five member Board, four out of the five votes are required for a decision. In order to have your petition granted, you must receive positive votes from all four members sitting. Attorney Kallman consulted his client and agreed to move forward.

13 Plains Road, Felice Ciardiello requests a retroactive **Special Permit** pursuant to Section XI.J for the installation of a hydronic heater and a **Variance** pursuant to Section V.I Table of Dimensional and Density Regulations for relief from dimensional requirements for locating the hydronic heater. (continued from June and July meetings) Chairman Gambale read the legal notice and re-opened the public hearing at 7:33p.m.

The Petitioner was present with his father Angelo Ciardiello, Nalin Mistry of Mistry Engineering in Reading , Chuck Clark of CP Enterprises and Attorney Rich Kallman representing the Petitioner. Attorney Kallman said he had reviewed the previous meetings on this petition on ICAM. He proposed five conditions to address neighbors issues and for the Board to consider.

Mr. Mistry submitted three documents to the Board: Existing Conditions Plan, dated 8/18/2011 – Aerial view of existing house 13 Plains Road Ipswich, Massachusetts Ciardiello property date 8/18/2011 and Existing Conditions Site Plan Analysis 13 Plains Road date July 21, 2011 (herby incorporated by reference). Mr. Mistry spoke to the plan showing the heights and distances of the five surrounding homes within the cone of influence. He referenced the aerial view and current height of the stack from the top of the slab it sits on is 13'6".

The conditions suggested by Attorney Kallman were as follows: 1) Raise the stack height to satisfy the Board and neighbors. 2) Place a fence around the area. 3) Build an accessory structure to hold the wood (this would require a

variance from the Board). 4) Conduct annual inspection to insure proper function; 5) compile a list of materials that cannot be burned.

Discussion ensued identifying the problem of excessive smoke created in the neighborhood. The Board determined that in lieu of listing the many things not to burn, only dry wood would be allowed to burn. Chuck Clark estimated twelve cords maximum would be burned in a year's time. It was noted that the burner is used for domestic hot water and therefore would burn year round.

Further discussion took place concerning state and federal standards establish that the burners are safe to burn in neighbors, the location of the burner, and the impacts on the surrounding neighbors.

Abutters Brian MacWhinnie (11 Plains Road), Steve Larson (17 Plains Road), Al Cuevas (10 Plains Road) and Carol Donohue (12 Plains Road) all spoke in opposition to the location of the existing hydronic heater. Measurements cited by the Petitioner were disputed; the house at 12 Plains was not shown on the plan; it was questioned if annual inspections are sufficient; height of trees surrounding the heater, additional locations for the heater could be located legally and not require relief from the Board.

Al Cuevas, 10 Plains Road submitted a colored site analysis of the lot, an aerial photograph. He spoke to the height of the trees surrounding the heater and the alternative location is opened and lets the wind and air flow down gradient from the homes. He submitted two colored photos (herby incorporated to the file) showing trees taller than the telephone poles that are 40' high and the trees are higher.

Alan O'Connor, 15 Plains Road spoke in support of the petition and questioned what would be gained by moving it closer to the property owners home—it would be further from Brian MacWhinnie and his father's home, but closer to other homes.

Discussion continued regarding the location of homes in proximity to the burner, the height of the stack, EPA regulations, the reasons for the variance request and the location of accessory structures.

In response to the Chairman, Attorney Kallman acknowledged that there is another viable location where the burner can be located.

Attorney Kallman then spoke to criteria for a Variance, he also spoke to the new technologies that the Board will be required to consider in the future. In response to the Board's query, Mr. Clark indicated a yearly inspection would not accomplishing much and spoke to the owner's maintenance responsibilities.

Mr. Mistry spoke to the surrounding trees acting like a natural chimney and continued to discuss the variance for the lot when the subdivision was created.

Discussion continued abutter Al Cuevas spoke to the alternate location for the burner without a variance from this Board; the Petitioner would be required to seek relief from the state for a fifty-foot setback.

Attorney Kallman initiated discussion showing the ICC map and a mini conference took place at the Board's table discussing locations and the jurisdiction of the Conservation Commission, the elevations and the stack height. Abutter Al Cuevas spoke to the survey, the zoning bylaw for accessory structures and opined that the superimposed wedge location is accurate, so there is no hardship on the local level. Attorney Kallman agreed that there is one location that does not require a variance and then proceeded to present a hypothetical hearing had the Petition come

before he installed the burner; he opined that the Board would have agreed with the location as it is currently. He also spoke to the learning curve for operating this burner and getting it to work just right.

The Board discussed another possible condition—for the Petitioner to return to this Board in one year for a review and give opportunity for abutters concerns to express their concerns, if any. The Petitioner agreed to this condition through his attorney.

The Board determined that the proposed conditions require edification and Attorney Kallman agreed to return to a subsequent meeting with detailed plans for a structure designed to hold wood. The Board determined that a fence would not be required. Additionally, it was determined that of list of what not to burn would be modified to a list of what can be burned, which would be strictly dry wood; specifics are required for raising the stack to 26.6 feet. Finally, the Petitioner agreed to bear the expense of the public hearing process, including legal notice and abutter's notice if the Board revisits this petition in a year's time.

On behalf of the Petitioner Attorney Kallman requested to continue the public hearing until the October 20, 2011 meeting, same place same time. (Attorney Kallman was not available for the September meeting)

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: Board Existing Conditions Plan, dated 8/18/2011 – Aerial view of existing house 13 Plains Road Ipswich, Massachusetts Ciardiello property date 8/18/2011 and Existing Conditions Site Plan Analysis 13 Plains Road date July 21, 2011 and two color photos of trees in the area.

17 Island Park Road, Mark Kilgour requests: 1) a **Special Permit** pursuant to Section IX.J and provisions in II.B (5) to allow reconstruction after a fire and to allow expansion of an already nonconforming structure; 2) **Special Permit** pursuant to Section VI.B footnote 2 Table of Dimensional and Density Regulations to reduce the left side set back no more than 50% of the requirement for an addition. Chairman Gambale recused himself and left the meeting room. Mr. Fierro was Acting Chair. Attorney Chip Nylen was present to represent the Petitioner. He reviewed the history of the lot when in 1950's the subdivision was created and most lots were rendered non-conforming due to changes in the Zoning Bylaw in the 1990's. Last winter the entire dwelling was lost due to fire. The request before the Board is for reconstruction to include a mudroom, reducing the left side yard setback from 28.1 feet to 20.3 feet. The second request is for a Special Permit is to allow expansion of an additional 600 square feet to the rear of the dwelling.

The work is proposed more than two hundred and fifty (250) feet away from the wetlands. Discussion took place regarding the location of the wetlands (270 feet away) increase of with a second story of 600 square feet by only 150 square feet of impervious area. The 8'x9' mudroom would be on the left side of the house, it will be fully enclosed, no heat; the same area was previously a deck.

The Board reviewed criteria compliance for a Special Permit and found the increase of 600 square feet is compatible with single-family houses in the neighborhood. The home had three bedrooms previously and no additional bedrooms are proposed. There will be no additional impact on town services, or utilities, traffic or parking, it will be compatible with the neighborhood; no negative impacts on the natural environment.

Attorney Jill Mann was present and represented the owner of 38 Island Park Rd, Robert Price. (his son owns 53 Island Park Rd.) She expressed concern for lack of a grading plan and lack of the percentage of occupation and open space area, as well as concerns for changes to the topography and grading alterations that may impact surrounding wetlands. She said the plan shows a split rail fence that cuts off the right of way that bisects the lots to the rear of the property.

Mr. Price objected to the installation of a walk out basement, claiming that there was never a walk out basement before. He requested the use of hay bales during construction, as well as fencing off the dugout hole for safety reasons.

Attorney Nylen responded that there is no change in contours and that the coverage is less than 50% of the lot. He said the property is upland and the land slopes down and away from the street. The Petitioner said his house always had a walk out basement and the split rail fence had been there since he lived there.

Mr. Fierro closed the public hearing; Mr. Vlahos seconded the motion, the motion passed unanimously.

The Board discussed the request and compliance with special permit criteria.

Mr. LeBlanc moved that the Board grant the Special Permit as requested by the Petitioner from the Provision s of the Protective Zoning Bylaw, Section VI.B footnote 2Table of Dimensional and Density Regulations to reduce the left side set back no more than 50% of the requirement for an addition in accordance with plan titled Plan of Land in Ipswich Massachusetts surveyed for Mark Kilgour dated May 13, 2001. Mr. Vlahos seconded, the motion passed unanimously.

Mr. Fierro reviewed the Special Permit criteria for relief requested to allow reconstruction after a fire and to allow expansion of an already nonconforming structure.

Mr. LeBlanc moved that the Board grant the Special Permit as requested by the Petitioner from the Provision s of the Protective Zoning Bylaw, Section IX.J, and provisions in II.B (5) to allow reconstruction after a fire and to allow expansion of an already nonconforming structure, in accordance with plan titled Plan of Land in Ipswich Massachusetts surveyed for Mark Kilgour dated May 13, 2001. Ms. MacCrae seconded. The motion passed unanimously.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: a Petition application timed stamped July 26, 2011 including a plan titled Plan of Land in Ipswich Massachusetts surveyed for Mark Kilgour dated May 13, 2011- an e-mail brief from Attorney Richard Nylen Jr. dated August 16, 2011 with a statement of support with signatures from fifteen neighbors.

19 Island Park Road, Roslyn Kulak requests a **Special Permit** pursuant to Section IX.J for an Accessory Apartment and 2) **Special Permit** pursuant VI.B footnote 2Table of Dimensional and Density Regulations to reduce the left side set back no more than 50% of the requirement for an addition. Chairman Gambale recused himself and left the meeting room. Mr. Fierro read the legal notice and opened the public hearing at 10:07 p.m. the Petitioner was present with her Architect Brendan O' Donoghue of Ebben Creek to explain her request to accommodate her mother with a place to live while helping her with childcare and homemaking. The lot is 24,000 square feet and the house was built 1955 rendering it non-conforming; the addition included one of the three bedrooms to be incorporated as kitchenette and living space; the septic system has been updated to comply with Board of Health requirements for accessory apartments; the setback is 26-feet and the proposed setback would reduce it to 20-feet. It was confirmed that there is a not one but two common wall connectors.

Jean Beverly abutter at 21 Island Park Road stated her approval and questioned how close to her side of the property. When told that it will be six feet she, expressed no objection.

The Board and the Petitioner discussed parking; the driveway is paved and can accommodate four cars, additionally there is an unpaved gravel area for parking a car. The Petitioner acknowledged the seventeen conditions to establish an accessory apartment read aloud by Mr. Fierro.

Mr. LeBlanc moved that the Board grant the Special Permit to provide an addition on the east side no closer than 20 feet in accordance with a plan titled Kulak Residence 19 Island Plark Road Ipswich, MA 01938 dated July 24, 2011. Ms. MacRae. The motion passed unanimously.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session are listed below: a Petition application timed stamped July 26, 2011 including a plan titled KULAK RESIDENCE 19 ISLAND PARK ROAD IPSWICH, MA 01938 dated July 24, 2007.

Approval of Minutes:

Mr. Fierro moved to approve the minutes of July 21, 2011 as amended, seconded by Mr. LeBlanc and unanimously approved.

Adjourn:

Mr. LeBlanc moved to adjourn at 10:41 pm. Mr. Gambale seconded and the motion passed unanimously.

Respectfully submitted,

Marie Rodgers

Administrative Assistant

These minutes were approved by the Board with minor revisions on September 15, 2011.